

The Service Occupation Tax is a tax imposed on the tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101 – 140.109. (This is a GIL.)

November 29, 2005

Dear Xxxxx:

This letter is in response to your letter dated October 25, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC provides web-based sales & use tax compliance services to its clients. We believe that our services are exempt from sales and use tax or gross receipts-type taxes in each of the states. However, in order to protect ourselves and our clients, we desire an opinion from each state regarding the tax status of our services. We would like a ruling from your department to ensure that we are complying with your state's tax laws and regulations and to determine if there are any sales or use tax implications. Below is a description of our products:

SERVICE is a web hosted exemption certificate service. ABC's client is the seller. When the seller makes an exempt sale to a customer, an exemption certificate is needed as support. The customer is instructed to go to ABC's portal on the worldwide web where all the exemption certificates for all the states are available. The customer chooses the exemption certificate for the state that is applicable, fills out the certificate on-line, prints out the certificate, signs the certificate and faxes the certificate to the ABC fax server, located in California. The certificate is immediately available for inspection by our client in PDF format on ABC's website. No tangible personal property is transferred between any of the parties. Is this service subject to tax in our state?

RETURN is a web hosted sales tax return compliance service. If our client needs a sales tax return for your state, the following steps will occur. The client will transfer their accounting data via the internet to ABC's mainframe. The data is mapped to the line items on the sales tax returns. A sales tax return is prepared in PDF format. The return is either sent electronically to the state or is emailed to the client in PDF format or

mailed to the client in paper form. The client then takes the return, cuts a check and sends the return to the state's department of revenue. Is this service subject to tax in your state?

At this point, ABC does not have nexus in any states other than California. However, this may change if we hire canvassing sales personnel. Please call me or email me if you need further information regarding our services.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 86 Ill. Adm. Code 150.101.

If no tangible personal property is being transferred to the customers, then no Illinois Retailers' Occupation Tax or Use Tax would apply. Likewise, the Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. See 86 Ill. Adm. Code 140.101 and 160.101. If no tangible personal property is being transferred to the customers incident to the services provided, then no Illinois Service Occupation Tax nor Service Use Tax would apply.

If tangible personal property is transferred incident to the providing of a service, those transfers may result in either Service Occupation Tax liability or Use Tax liability for the serviceman depending upon his activities. See 86 Ill. Adm. Code 140.101 through 140.109.

Determinations regarding the subject of nexus are normally very fact specific. The Department has found that the best manner to determine nexus is for a Department auditor to examine all relevant facts and information. The following guidelines, however, may be useful to you in determining whether your company would be considered "a retailer maintaining a place of business in Illinois" subject to Use Tax collection obligations. Whether a retailer is subject to Illinois Retailers' Occupation Tax (sales tax) liability or is required to collect Illinois Use Tax from its Illinois customers depends upon whether that retailer has sufficient "nexus" with the State of Illinois so that the retailer will be subject to Illinois law. The following information outlines the principles of nexus.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers. Another type of retailer is the out-of State Retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i). This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax law. The Supreme Court has set out a two-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis will trigger Use Tax collection responsibilities. See Brown's Furniture, Inc. v. Wagner, 171 Ill.2d 410 (1996).

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. Sales of tangible personal property made in Illinois and delivered to purchasers in Illinois are subject to Retailers' Occupation Tax and any applicable local taxes. Persons considered being "retailers maintaining a place of business" because of their Illinois activities are required to collect Use Tax on sales made to all Illinois purchasers regardless of the manner in which the orders are placed.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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